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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Maza et al.

Serial No.: 09/800,547

Filed: March 7, 2001

For: IMPROVED PROCESS FOR PRODUCING EMULSIFIED SALAD DRESSINGS

Group: 1761

Examiner: C. Paden

Edgewater, New Jersey 07020

October 9, 2003

BRIEF FOR APPELLANTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 2233-1450

Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellant.

Please charge the \$330.00 fee to our Deposit Account No. 12-1155. Any deficiency or overpayment should be charged or credited to this Deposit Account. This authorization is submitted in triplicate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. A. Squillante, Jr.".

Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

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CERTIFICATE OF MAILING

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Alexandria, VA 22313-1450"

on October 9, 2003

Edward A. Squillante, Jr.
Reg. No. 38,319
Attorney for Applicant(s)

10/9/03
Date of Signature

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TABLE OF CONTENTS

I. Real Party In Interest.....	4
II. Related Appeals.....	4
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IV. Status of Amendments	5
V. Summary of the Invention	5-6
VI. Issues as Framed by the Final Rejection	6

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VIII. Appellant's Arguments.....	7-11
IX. Conclusion.....	11
X. Appendix.....	12-15

I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Unilever Bestfoods, North America, a division of Conopco, Inc. and a corporation of the State of New York.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1 through 27, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

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Amendments were filed on November 11, 2002 and March 21, 2003. Both Amendments were entered by the Examiner as indicated by the Examiner in the Record and the Advisory Action of 27 August 2003.

V. SUMMARY OF THE INVENTION

The invention set forth in the claims on appeal is directed a process for the production of emulsified spoonable and pourable dressings and the resulting food product prepared from the process. The claimed process is superior since it allows for the production of spoonable and pourable dressings using an in-line mixer/emulsifier requiring only one pass through the in-line mixer/emulsifier.

By the presently claimed invention, therefore, a superior process for making dressings has been invented. As may be readily gleaned from, for example, Examples 1-4 in the specification, the claimed process unexpectedly results in emulsified spoonable and pourable dressings that are of high quality, notwithstanding the fact the same was made in an in-line mixer/emulsifier requiring only one pass.

In the Specification, the portion from page 1, line 19 to page 2, line 14 is background. The phraseology used in claim 1 may be found, for example, on pages 3 and 4 of the specification. Beginning at page 15, line 19, working examples, illustrating the unexpected and superior results obtained when employing the process of this invention, are put forth.

VI. ISSUES AS FRAMED BY THE FINAL REJECTION

The issue raised in this appeal is primarily one of fact and of the type normally encountered in connection with a rejection made under 35 USC § 103. In particular, the issue is as follows:

Would one of ordinary skill in the art upon reading Trainor (U.S. Patent No. 4,423,084) in view of Ross (U.S. Patent No. 5,632,596) find it obvious to make emulsified spoonable and pourable dressings in a one pass method as described in the claims.

VII. GROUPING OF CLAIMS

Appellants submit that claims 1 through 27 stand and fall together.

VIII. APPELLANTS' ARGUMENTS

Rejection Under 35 USC §103

The Examiner has issued a final rejection of claims 1 – 27 under 35 USC §103 as being unpatentable over Trainor, U. S. Patent No. 4,423,084 (hereinafter, '084) in view of Ross, U. S. Patent No. 5,632,596 (hereinafter, '596). In the rejection, the Examiner continues to maintain that the '084 reference discloses a method for making a salad dressing with ingredients that include starch, acidulant, egg, oil, water and sweetener. The Examiner further maintains that the ingredients set forth in the '084 reference are mixed and then processed in a colloid mill with a rotor and a stator. The Examiner continues by maintaining that the claimed invention differs from the '084 reference in that the '084 reference fails to describe specific apparatus features. Nevertheless, the Examiner relies on the apparatus description of the '596 reference to "cure" the many deficiencies of the '084 reference. In this regard, the Examiner maintains that the obviousness rejection is warranted and should remain final.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as already made of record and as set forth in independent claim 1, is directed to a process for making a dressing comprising the steps of:

- (a) combining raw ingredients in a pre-mix tank comprising a means for mixing to form a coarse emulsion, and
- (b) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and a slanted opening dimension is defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimension

wherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the throughput of the process, the characteristics of the rings of teeth of the stator and rotor, and the presence of radial channels on the stator and rotor. The process of claim 1 is still further defined in that the raw ingredients can comprise an oil phase, an egg phase, an aqueous phase, a starch paste phase, a sweetener phase, an acidulant phase, optional solids, or combinations thereof. Claims 23 and 24 identify the raw ingredients as being those which can be employed to make a mayonnaise composition comprising from about 65% to about 81% oil, or from about 19% to about 35% oil, or from about 5% to about 6% oil, as well as ingredients for making a salad dressing comprising from about 45% to about 55% oil. Claims 25-27 define the type of emulsifier and the amounts employed.

Claim 22 is directed to a spoonable or pourable dressing made by the process of claim 1.

In contrast, and as already made of record, the '084 reference merely describes a process for making emulsified salad dressings in the absence of freeze-resistant starch. The '084 reference does not teach, suggest, or disclose, for example, the steps of forming a premix of raw ingredients which include an oil phase and an emulsifier phase to make a coarse emulsion to be fed in One Pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement, as

claimed. Moreover, the '084 reference does not teach the specific oil amounts, additives and emulsifier amounts set forth in the presently claimed invention.

Furthermore, the '084 reference fails, in every way, to disclose: gap adjustability (0.015 increments); rotor and stator diameters; critical rotor speeds; tip speeds; throughput rates, all of which are required to make superior food products.

The vast deficiencies of the '084 reference are not cured by the '596 reference since the '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The '596 reference does not, even remotely, suggest blending mayonnaise and/or salad dressing compositions in One Pass. Moreover, nothing in the '596 reference suggests the critical limitations outlined above needed to make a superior food product. Appellants respectfully submit that important and critical limitations like axial opening dimensions, rotor tip speeds and throughput rotor cannot be ignored.

In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103.

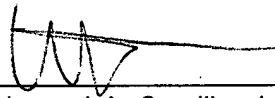
Moreover, when establishing a *prima facie* case of obviousness, it is fundamentally improper for the Examiner to gloss over important and critical claim limitations. The Examiner must consider the "invention as a whole", including all limitations of the claimed invention. In re Boe 184 USPQ 38, 40 (CCPA 1974) ("..., all limitations must be considered and that it is error to ignore specific limitations distinguishing over the references").

In view of the above, Appellants submit that a proper rejection under 35 USC §103 has not been made. Accordingly, reversal of the Final Rejection by the Honorable Board is appropriate and is courteously solicited.

IX. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1 through 27 under 35 U.S.C. §103.

Respectfully submitted,



Edward A. Squillante, Jr.
Registration No. 38,319
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X. APPENDIX

1. A process for making a dressing comprising the steps of:
 - (a) combining raw ingredients in a pre-mix tank comprising a means for mixing to form a coarse emulsion, and
 - (b) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and slanted opening dimension is defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimension wherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.
2. The process of Claim 1 wherein the axial opening dimension is from about 0.010 inches to about 0.500 inches.
3. The process of Claim 1 wherein the axial opening dimension is from about 0.030 inches to about 0.180 inches.

4. The process of Claim 1 wherein the diameter of the stator and rotor is about 9 inches or more.
5. The process of Claim 1 wherein the diameter of the stator and rotor is about 12 inches to about 18 inches.
6. The process of Claim 1 wherein the diameter of the stator and rotor is about 12 inches to about 15 inches.
7. The process of Claim 1 wherein the adjustable motor operates at up to about 3,600 rpm.
8. The process of Claim 1 wherein the rotor operates at rotational speeds of about 1,500 rpm to about 8,000 rpm.
9. The process of Claim 1 wherein the rotor operates at rotational speeds of about 1,900 rpm to about 5,000 rpm.
10. The process of Claim 1 wherein the rotor has a tip speed of about 6,500 ft/min to about 15,000 ft/min.
11. The process of Claim 1 wherein the rotor has a tip speed of about 7,125 ft/min to about 14,125 ft/min.
12. The process of Claim 1 having a throughput rate of about 100 pounds per minute to about 1,000 pounds per minute.

13. The process of Claim 1 having a throughput rate of about 145 pounds per minute to about 1,000 pounds per minute.
14. The process of Claim 1 having a throughput rate of about 500 pounds per minute to about 750 pounds per minute.
15. The process of Claim 1 wherein the co-axially engageable rings of teeth of the stator and rotor are separated to define radial channels.
16. The process of Claim 15 wherein the stator and rotor comprise a plurality of radial channels.
17. The process of Claim 1 wherein the raw ingredients are further comprised of an aqueous phase.
18. The process of Claim 1 wherein the raw ingredients are further comprised of a starch paste phase.
19. The process of Claim 1 wherein the raw ingredients are further comprised of a starch phase, a sweetener phase and an aqueous phase.
20. The process of Claim 1 wherein the raw ingredients are further comprised of an aqueous phase, an acidulant phase and, optionally, a solids phase.
21. The process of Claim 1 wherein the raw ingredients are combined to form an emulsion containing product.

22. A spoonable or pourable dressing made by the process of Claim 1.
23. The process of claim 1 wherein the raw ingredients are ingredients for making a mayonnaise composition comprising from about 65% to about 81% oil, or from about 19% to about 35% oil, or from about 5% to about 6% oil.
24. The process of claim 1 wherein the raw ingredients are ingredients for making a salad dressing comprising from about 45% to about 55% oil.
25. The process of claim 1 wherein the emulsifier phase comprises egg.
26. The process of claim 25 wherein the dressing comprises from about 2.0% to about 8.0% egg.
27. The process of claim 1 wherein the dressing comprises from about 0.1 to about 0.3% emulsifier.



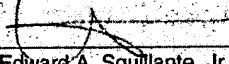
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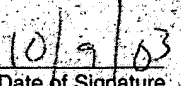
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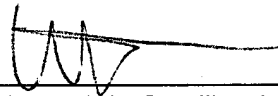
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3. The process of Claim 1 wherein the axial opening dimension is from about 0.030 inches to about 0.180 inches.

4. The process of Claim 1 wherein the diameter of the stator and rotor is about 9 inches or more.
5. The process of Claim 1 wherein the diameter of the stator and rotor is about 12 inches to about 18 inches.
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7. The process of Claim 1 wherein the adjustable motor operates at up to about 3,600 rpm.
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23. The process of claim 1 wherein the raw ingredients are ingredients for making a mayonnaise composition comprising from about 65% to about 81% oil, or from about 19% to about 35% oil, or from about 5% to about 6% oil.
24. The process of claim 1 wherein the raw ingredients are ingredients for making a salad dressing comprising from about 45% to about 55% oil.
25. The process of claim 1 wherein the emulsifier phase comprises egg.
26. The process of claim 25 wherein the dressing comprises from about 2.0% to about 8.0% egg.
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